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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

STEVE GALLION, individually and on) Case No.
behalf of all others similarly situated,)

Plaintiff,)

vs.)

MY1HR, INC. d/b/a HEALTH)
OPTIONS USA; MY1HR d/b/a)
HEALTH OPTIONS USA;)
KLONOWSKI AGENCY, INC.;)
INSXCLOUD; SCOTT KLONOWSKI;)
PAUL ILIE; and DOES 1 through 10,)
inclusive, and each of them,)

Defendant.)

CLASS ACTION

**COMPLAINT FOR VIOLATIONS
OF:**

1. NEGLIGENT VIOLATIONS
OF THE TELEPHONE
CONSUMER PROTECTION
ACT [47 U.S.C. §227(b)]
2. WILLFUL VIOLATIONS
OF THE TELEPHONE
CONSUMER PROTECTION
ACT [47 U.S.C. §227(b)]

DEMAND FOR JURY TRIAL

Plaintiff STEVE GALLION (“Plaintiff”), individually and on behalf of all
others similarly situated, alleges the following upon information and belief based
upon personal knowledge:

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1 **NATURE OF THE CASE**

2 1. Plaintiff brings this action individually and on behalf of all others
3 similarly situated seeking damages and any other available legal or equitable
4 remedies resulting from the illegal actions of MY1HR, INC. d/b/a HEALTH
5 OPTIONS USA, MY1HR d/b/a HEALTH OPTIONS USA, KLONOWSKI
6 AGENCY, INC., INSXCLOUD, SCOTT KLONOWSKI, and PAUL ILIE
7 (“Defendant”), in negligently, knowingly, and/or willfully contacting Plaintiff on
8 Plaintiff’s cellular telephone in violation of the Telephone Consumer Protection
9 Act, 47. U.S.C. § 227 *et seq.* (“TCPA”) and related regulations, thereby invading
10 Plaintiff’s privacy and causing her to incur unnecessary and unwanted expenses.

11 **JURISDICTION & VENUE**

12 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,
13 a resident of California, seeks relief on behalf of a Class, which will result in at
14 least one class member belonging to a different state than that of Defendant, a
15 Delaware company. Plaintiff also seeks up to \$1,500.00 in damages for each call
16 in violation of the TCPA, which, when aggregated among a proposed class in the
17 thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction.
18 Therefore, both diversity jurisdiction and the damages threshold under the Class
19 Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

20 3. Venue is proper in the United States District Court for the Central
21 District of California pursuant to 28 U.S.C. § 1391(b)(2) because Defendant does
22 business within the State of California and Plaintiff resides within the County of
23 San Bernadino.

24 **PARTIES**

25 4. Plaintiff, STEVE GALLION (“Plaintiff”), is a natural person residing
26 in San Bernando, California and is a “person” as defined by 47 U.S.C. § 153 (39).

27 5. Defendant, MY1HR, INC. d/b/a HEALTH OPTIONS USA
28 (“Defendant MY1HR, INC”), is a company in the business of sales of cloud-based

1 software to health insurance issuers and brokers, and is a “person” as defined by 47
2 *U.S.C. § 153 (39)*.

3 6. Defendant, MY1HR d/b/a HEALTH OPTIONS USA (“Defendant
4 MY1HR”), is company in the business of sales of cloud-based software to health
5 insurance issuers and brokers, and is a “person” as defined by 47 *U.S.C. § 153 (39)*.

6 7. Defendant, KLONOWSKI AGENCY, INC. (“Defendant
7 KLONOWSKI AGENCY”), is company in the business of sales of cloud-based
8 software to health insurance issuers and brokers, and is a “person” as defined by 47
9 *U.S.C. § 153 (39)*.

10 8. Defendant, INSXCLOUD (“Defendant INSXCLOUD”), is company
11 in the business of sales of cloud-based software to health insurance issuers and
12 brokers, and is a “person” as defined by 47 *U.S.C. § 153 (39)*.

13 9. Defendant, SCOTT KLONOWSKI (“Defendant KLONOWSKI”), is
14 an individual who at all relevant times was the CEO of Defendant MY1HR, INC.,
15 MY1HR, KLONOWSKI AGENCY, and INSXCLOUS (hereinafter
16 “Defendants”). As CEO of Defendants, Defendant KLONOWSKI was responsible
17 for the overall success of the company. Defendant KLONOWSKI materially
18 participated in marketing and occupying a position of critical importance to
19 Defendants’ business. As the CEO of Defendants, Defendant KLONOWSKI is
20 liable for the nefarious conduct engaged in by Defendant FAF and its agents acting
21 on Defendants’ behalf. Defendant KLONOWSKI continued to play a key role in
22 maintaining and expanding Defendants’ activities throughout the time in question.
23 Furthermore, Defendant KLONOWSKI is a “person” as defined by 47 *U.S.C. §*
24 *153(39)*.

25 10. Defendant, PAUL ILIE (“Defendant ILIE”), is an individual who at
26 all relevant times was the Chief Technology Officer of Defendant MY1HR, INC.,
27 MY1HR, ILIE AGENCY, and INSXCLOUS (hereinafter “Defendants”). As Chief
28 Technology Officer of Defendants, Defendant ILIE was responsible for the overall

1 success of the company. Defendant ILIE materially participated in marketing and
2 occupying a position of critical importance to Defendants' business. As the Chief
3 Technology Officer of Defendants, Defendant ILIE is liable for the nefarious
4 conduct engaged in by Defendant FAF and its agents acting on Defendants' behalf.
5 Defendant ILIE continued to play a key role in maintaining and expanding
6 Defendants' activities throughout the time in question. Furthermore, Defendant
7 ILIE is a "person" as defined by 47 U.S.C. § 153(39).

8 11. Collectively and hereinafter, Defendant MY1HR, INC., MY1HR,
9 ILIE AGENCY, INSXCLOUS, KLONOWSKI and Defendant ILIE will be
10 referred to as "Defendant".

11 12. The above named Defendant, and its subsidiaries and agents, are
12 collectively referred to as "Defendants." The true names and capacities of the
13 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
14 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
15 names. Each of the Defendants designated herein as a DOE is legally responsible
16 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the
17 Complaint to reflect the true names and capacities of the DOE Defendants when
18 such identities become known.

19 13. Plaintiff is informed and believes that at all relevant times, each and
20 every Defendant was acting as an agent and/or employee of each of the other
21 Defendants and was acting within the course and scope of said agency and/or
22 employment with the full knowledge and consent of each of the other Defendants.
23 Plaintiff is informed and believes that each of the acts and/or omissions complained
24 of herein was made known to, and ratified by, each of the other Defendants.

25 **FACTUAL ALLEGATIONS**

26 14. Beginning in or around April of 2018, Defendant contacted Plaintiff
27 on Plaintiff's cellular telephone number ending in -6963, in an attempt to solicit
28 Plaintiff to purchase Defendant's services.

1 15. Defendant contacted or attempted to contact Plaintiff from telephone
2 number (910) 830-0147 confirmed to belong to Defendant.

3 16. When Plaintiff would answer Defendant's call, Plaintiff would hear
4 an automated recorded message followed by a prompt to press "1" in order to be
5 connected to a live employee for more information.

6 17. Defendant used an "automatic telephone dialing system" as defined
7 by 47 U.S.C. § 227(a)(1) to place its call to Plaintiff seeking to solicit its services.

8 18. Defendant's calls constituted calls that were not for emergency
9 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

10 19. Defendant's calls were placed to telephone number assigned to a
11 cellular telephone service for which Plaintiff incurs a charge for incoming calls
12 pursuant to 47 U.S.C. § 227(b)(1).

13 20. During all relevant times, Defendant did not possess Plaintiff's "prior
14 express consent" to receive calls using an automatic telephone dialing system or an
15 artificial or prerecorded voice on his cellular telephone pursuant to 47 U.S.C. §
16 227(b)(1)(A).

17 21. Defendant placed multiple calls soliciting its business to Plaintiff on
18 his cellular telephone ending in -6963 beginning in or around April of 2018 and
19 continuing for several months.

20 22. Such calls constitute solicitation calls pursuant to 47 C.F.R. §
21 64.1200(c)(2) as they were attempts to promote or sell Defendant's services.

22 23. Plaintiff received numerous solicitation calls from Defendant within a
23 12-month period.

24 24. Upon information and belief, and based on Plaintiff's experiences of
25 being called by Defendant despite having no prior relation to Plaintiff whatsoever,
26 and at all relevant times, Defendant failed to establish and implement reasonable
27 practices and procedures to effectively prevent telephone solicitations in violation
28 of the regulations prescribed under 47 U.S.C. § 227(c)(5).

CLASS ALLEGATIONS

25. Plaintiff brings this action individually and on behalf of all others similarly situated, as a member of the proposed class (hereinafter, “The Class”), defined as follows:

All persons within the United States who received any solicitation/telemarketing telephone calls from Defendant to said person’s cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously consented to receiving such calls within the four years prior to the filing of this Complaint

26. Plaintiff represents, and is a member of, The Class, consisting of all persons within the United States who received any solicitation/telemarketing telephone calls from Defendant to said person’s cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously not provided their cellular telephone number to Defendant within the four years prior to the filing of this Complaint.

27. Defendant, its employees and agents are excluded from The Class. Plaintiff does not know the number of members in The Class, but believes the Class’s members number in the thousands, if not more. Thus, this matter should be certified as a Class Action to assist in the expeditious litigation of the matter.

28. The Class is so numerous that the individual joinder of all of its members is impractical. While the exact number and identities of The Class members are unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff is informed and believes and thereon alleges that The Class includes thousands of members. Plaintiff alleges that The Class members may be ascertained by the records maintained by Defendant.

29. Plaintiff and members of The Class were harmed by the acts of

1 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
2 and The Class members via their cellular telephones thereby causing Plaintiff and
3 The Class members to incur certain charges or reduced telephone time for which
4 Plaintiff and The Class members had previously paid by having to retrieve or
5 administer messages left by Defendant during those illegal calls, and invading the
6 privacy of said Plaintiff and The Class members.

7 30. Common questions of fact and law exist as to all members of The
8 Class which predominate over any questions affecting only individual members of
9 The Class. These common legal and factual questions, which do not vary between
10 Class members, and which may be determined without reference to the individual
11 circumstances of any Class members, include, but are not limited to, the following:

- 12 a. Whether, within the four years prior to the filing of this
13 Complaint, Defendant made any telemarketing/solicitation call
14 (other than a call made for emergency purposes or made with
15 the prior express consent of the called party) to a Class member
16 using any automatic telephone dialing system or any artificial
17 or prerecorded voice to any telephone number assigned to a
18 cellular telephone service;
- 19 b. Whether Plaintiff and The Class members were damaged
20 thereby, and the extent of damages for such violation; and
- 21 c. Whether Defendant should be enjoined from engaging in such
22 conduct in the future.

23 31. As a person that received numerous telemarketing/solicitation calls
24 from Defendant using an automatic telephone dialing system or an artificial or
25 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting
26 claims that are typical of The Class.

27 32. Plaintiff will fairly and adequately protect the interests of the members
28 of The Class. Plaintiff has retained attorneys experienced in the prosecution of

1 class actions.

2 33. A class action is superior to other available methods of fair and
 3 efficient adjudication of this controversy, since individual litigation of the claims
 4 of all Class members is impracticable. Even if every Class's member could afford
 5 individual litigation, the court system could not. It would be unduly burdensome
 6 to the courts in which individual litigation of numerous issues would proceed.
 7 Individualized litigation would also present the potential for varying, inconsistent,
 8 or contradictory judgments and would magnify the delay and expense to all parties
 9 and to the court system resulting from multiple trials of the same complex factual
 10 issues. By contrast, the conduct of this action as a class action presents fewer
 11 management difficulties, conserves the resources of the parties and of the court
 12 system, and protects the rights of each Class member.

13 34. The prosecution of separate actions by individual Class members
 14 would create a risk of adjudications with respect to them that would, as a practical
 15 matter, be dispositive of the interests of the other Class members not parties to such
 16 adjudications or that would substantially impair or impede the ability of such non-
 17 party Class members to protect their interests.

18 35. Defendant has acted or refused to act in respects generally applicable
 19 to The Class, thereby making appropriate final and injunctive relief with regard to
 20 the members of the Classes as a whole.

21 **FIRST CAUSE OF ACTION**

22 **Negligent Violations of the Telephone Consumer Protection Act**

23 **47 U.S.C. §227(b).**

24 **On Behalf of The Class**

25 36. Plaintiff repeats and incorporates by reference into this cause of action
 26 the allegations set forth above at Paragraphs 1-36.

27 37. The foregoing acts and omissions of Defendant constitute numerous
 28 and multiple negligent violations of the TCPA, including but not limited to each

1 and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular
2 *47 U.S.C. § 227 (b)(1)(A)*.

3 38. As a result of Defendant's negligent violations of *47 U.S.C. § 227(b)*,
4 Plaintiff and the Class Members are entitled an award of \$500.00 in statutory
5 damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

6 39. Plaintiff and The Class members are also entitled to and seek
7 injunctive relief prohibiting such conduct in the future.

8 **SECOND CAUSE OF ACTION**

9 **Knowing and/or Willful Violations of the Telephone Consumer Protection**
10 **Act**

11 **47 U.S.C. §227(b)**

12 **On Behalf of The Class**

13 40. Plaintiff repeats and incorporates by reference into this cause of action
14 the allegations set forth above at Paragraphs 1-36.

15 41. The foregoing acts and omissions of Defendant constitute numerous
16 and multiple knowing and/or willful violations of the TCPA, including but not
17 limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*,
18 and in particular *47 U.S.C. § 227 (b)(1)(A)*.

19 42. As a result of Defendant's knowing and/or willful violations of *47*
20 *U.S.C. § 227(b)*, Plaintiff and The Class members are entitled an award of
21 \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C.*
22 *§ 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

23 43. Plaintiff and the Class members are also entitled to and seek injunctive
24 relief prohibiting such conduct in the future.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff requests judgment against Defendant for the following:

27 ///

28 ///

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant's negligent violations of 47 U.S.C. §227(b)(1), Plaintiff and The Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B).
- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and The Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
- Any and all other relief that the Court deems just and proper.

JURY DEMAND

44. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully Submitted this 16th Day of January, 2019.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman
Todd M. Friedman
Law Offices of Todd M. Friedman
Attorney for Plaintiff